TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~469~~. 50

THE UNITED STATES OF AMERICA, PLAINTIFFS IN ERROR,

vs.

WILLIAM HODSON, SOLOMON HUTSON, AND THOMAS LYNCH, DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

FILED MAY 26, 1869.

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1 Circuit court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the fourteenth day) of September, A. D. 1868—present, the Honorable Andrew G. Miller, district judge, presiding; Cassius Fairchild, marshal; Edward Kurtz, clerk—among other the following proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, & Thomas Lynch. } At law.

Præcipe for summons.

Be it remembered that heretofore, to wit, on the 25th day of February, A. D. 1868, came the U. S. district attorney, Mr. Cogswell, and filed his præcipe for a summons against the above-named defendants, as follows, to wit:

Circuit court of the United States of America, district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, & Thomas Lynch.

Issue a summons in the above-entitled cause of a plea of debt to the plaintiff's damage three thousand ($3,000) dollars, returnable on the first Monday of March, next ensuing.

Milwaukee, Feb. 25th, 1868.

JNO. B. D. COGSWELL,
U. S. Att'y Wis.

To EDW. KURTZ, Esq., *Clerk, &c.*

Whereupon a summons issued, as follows:

2 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the marshal of the district of Wisconsin, greeting:

You are hereby commanded to summon William Hodson, Solomon Hutson, and Thomas Lynch, to appear before the circuit court of the United States of America for the district of Wisconsin, in the seventh circuit, at the United States court-room in the city of Milwaukee, on the first Monday of March ensuing, then and there to answer unto the United States of America in a plea of debt to their damage, three thousand dollars, which shall then and there be made to appear. And of this writ make due return.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this twenty-fifth day of February, in the year of our Lord one thousand

eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

EDWARD KURTZ, *Clerk.*

JNO. B. D. COGSWELL, *U. S. Dist. Attorney.*

(Indorsed:) Law docket. vs. . Summons.
Damages, $. Filed , 186 .

3 *Return to summons.*

Summons returned: "Served on the within-named William Hodson, Solomon Hutson, and Thomas Lynch, by showing them this summons, and delivering to each of them a copy thereof, this 26th day of February, 1868.

"CASSIUS FAIRCHILD, *Marshal.*
"By A. E. BURPEE, *Deputy.*"

Fees, $10 98.

Appearance of Wm. Hodson.

MARCH 5, 1868.—This day came the defendant, William Hodson, by his attorneys, Messrs. Carpenter & Cogswell, and filed his appearance, as follows:

Circuit court of the United States for the district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, & Thomas Lynch.

Please take notice that we have been retained for the defendant, William Hodson, in the above-entitled cause, & appear for him therein.

CARPENTER & COGSWELL,
Att'y for Def't William Hodson.

To JNO. B. D. COGSWELL, *U. S. Dist. Att'y.*

(Endorsed as follows:) Service of within admitted March 2d, 1868.
JNO. B. D. COGSWELL,
U. S. Att'y Dist. Wis.

4 *Appearance of Hutson & Lynch.*

And same day, (March 5, 1868,) came the defendants, Solomon Hutson & Thomas Lynch, by their attorney, Mr. A. Hyatt Smith, and filed their appearance as follows, to wit:

Circuit court of the United States for the district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, & Thomas Lynch.

Please take notice that I have been retained for the defendants, Solomon Hutson & Thomas Lynch, in the above-entitled cause, & appear for them therein.

A. HYATT SMITH, *Janesville, Wis.,*
Att'y for Def'ts Hudson & Lynch.

To JNO. B. D. COGSWELL, *U. S. Dist. Att'y.*

(Endorsed as follows:) Service of this notice admitted March 2d, 1868.
JNO. B. D. COGSWELL,
Att'y U. S. Dist. Wis.

Declaration.

JUNE 12, 1868.—This day came the district attorney and filed his declaration, as follows:

The United States circuit court, district of Wisconsin.—Of the first Monday of March, 1868.

The United States of America, plaintiffs in this suit, by Thomas Hood, their attorney, come and complain of William Hodson, Solomon Hutson, and Thomas Lynch, the defendants in this suit, of a plea that they, the said defendants, render to the said plaintiffs the sum of two thousand dollars, which they owe to and unjustly detain from the said plaintiffs.

For that whereas the said defendants heretofore, to wit, on the
5 first day of September, A. D. 1864, at Turtleville, to wit, at the district of Wisconsin aforesaid, made their joint and several writing obligatory, sealed with their seals, and now shown to the court, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said plaintiffs in the sum of two thousand dollars above demanded to be paid to the said plaintiffs; yet the said defendants, (although often requested so to do,) hath not as yet paid the said sum of two thousand dollars above demanded, or any part thereof, to the said plaintiffs, but have hitherto wholly neglected and refused, and still neglect and refuse so to do, to the damage of the plaintiffs of three thousand dollars; and therefore they bring suit.

By THOMAS HOOD,
U. S. Att'y Dist. Wis.

Rule to plead.

JULY 6, 1868.—This day came the district attorney, and on his motion it is ordered by the court that the defendants plead to the plaintiff's declaration on file by the first Monday of August next, or their default will be entered.

Demand of oyer.

JULY 18, 1868.—Demand of oyer filed, to wit:

Circuit court of the United States for the district of Wisconsin.

6 *Demand of Oyer.*

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, & Thomas Lynch.

The defendants demand oyer & copy of the writing obligatory mentioned in the declaration in this cause and the condition thereof, dated July, 1868.

Yours, &c.,

CARPENTER & COGSWELL,
Att'ys for Def't Hodson.
A. HYATT SMITH,
Att'y for other Def'ts.

To THOS. HOOD, Esq., *U. S. Dist. Att'y.*

Oyer given by copy of bond, received this 18th July, 1868.

CARPENTER & COGSWELL,
Att'ys for Wm. Hodson.
A. HYATT SMITH,
Att'y for other Def'ts.

Plea of Wm. Hodson.

JULY 31, 1868.—This day came the defendant, William Hodson, by his attorneys, and filed his plea, as follows:

Circuit court of the United States for the district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, & Thomas Lynch.

And the said defendant, William Hodson, by Carpenter & Cogswell, his attorneys, comes and defends the wrong and injury when, &c., and craves oyer of said supposed writing obligatory in the said declaration mentioned, and it is read to him, &c.; and he also craves oyer of the condition of the said supposed writing obligatory, and it is read to him in these words:

7

"The condition of the foregoing obligation is such, that whereas the said William Hodson has made application to the collector of internal revenue for the second collection district of the State of Wisconsin for a license as a distiller at Turtleville, situate in the town of Turtle, in the county of Rock, in the State of Wisconsin; now, therefore, if the said William Hodson shall truly and faithfully conform to all the provisions of an act entitled 'An act to provide internal revenue to support the government and to pay interest on the public debt, and for other purposes' approved June 30th, 1864, and such other acts as are now or may hereafter be in this behalf enacted, then the above obligation to be void & of no effect; otherwise it shall abide and remain in full force and virtue;" which being read & heard, the said defendant says, that the said plaintiff ought not to have or maintain its said action against him.

Because, he says, that he, the said defendant did, from time to time, & at all times, after the making of the said writing obligatory & the condition thereof, well and truly and faithfully conform to all & singular the provisions of the said act, entitled "An act to provide internal revenue to support the government and to pay interest on the public debt, and for other purposes," approved June 30th, 1864, and of such other act or acts as were then or were thereafter in that behalf enacted; in the said condition of the said writing obligatory specified, comprised, and mentioned in all things therein contained, on his part and behalf to be observed, performed, fulfilled, and kept according to the tenor & effect, true intent and meaning, of the said condition of the said writing obligatory.

8

And this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain its aforesaid action against him, &c.

CARPENTER & COGSWELL,
Attorneys for Defendant William Hodson.

I certify that in my opinion the foregoing plea is well founded.

GEO. COGSWELL, *of Counsel.*

And same day, (July 31, 1868,) came the defendants, Solomon Hutson and Thomas Lynch, by their attorney, and filed their plea as follows, to wit:

Circuit court of the United States for the district of Wisconsin.

9 *Plea of Hutson & Lynch.*

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, & Thomas Lynch.

And the said defendants, Solomon Hutson & Thomas Lynch, by A. Hyatt Smith, their attorney, come and defend the wrong & injury, when, &c., and crave oyer of said supposed writing obligatory in the said declaration mentioned, and it is read to them, &c., and they also crave oyer of the condition of said supposed writing obligatory, and it is read to them in these words:

"The condition of the foregoing obligation is such, that whereas the said William Hodson has made application to the collector of internal revenue for the second collection district of the State of Wisconsin for a license as a distiller at Turtleville, situated in the town of Turtle, in the county of Rock, in the State of Wisconsin: Now, therefore, if the said William Hodson shall truly and faithfully conform to all the provisions of an act entitled 'An act to provide internal revenue to support the government and to pay interest on the public debt, and for other purposes,' approved June 30th, 1864, and such other acts as are now or may hereafter be in this behalf enacted, then the above obligation to
10 be void and of no effect; otherwise it shall abide and remain in full force and virtue."

Which being read & heard, the said defendants say that the said plaintiff ought not to have or maintain its said action thereof against them; because, they say, that the said William Hodson did, from time to time, & at all times, after the making of the said writing obligatory & the condition thereof, well, truly, & faithfully conform to all & singular the provisions of the said act entitled "An act to provide internal revenue to suport the government and to pay interest on the public debt," and for other purposes, approved June 30th, 1864, and of such other act or acts as were then, or were thereafter in that behalf enacted; in the said condition of the said writing obligatory specified, comprised, and mentioned, in all things therein contained on his part and behalf to be obeyed, performed, fulfilled, and kept according to the tenor and effect, true intent and meaning of the said condition of said writing obligatory.

And this the said defendants are ready to verify; wherefore they pray judgment if the said plaintiff ought to have or maintain its aforesaid action against them, &c.

A. HYATT SMITH,
Attorney for Defendants Solomon Hutson & Thomas Lynch.

11 I certify that in my opinion the foregoing plea is well founded.
GEO. COGSWELL, *of Counsel.*

Replication.

AUGUST 19, 1868.—This day came the district attorney and filed his replication, as follows:

United States circuit court, district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, & Thomas Lynch. } Replication.

And the said plaintiffs, as to the pleas of the said defendants, by them above pleaded, say that they ought not to be barred from having and maintaining their aforesaid action, because they say that after the making the said writing obligatory, and before the commencement of this suit, the said William Hodson did not conform to all the provisions of the said act and acts; that is to say, the said William Hodson did then and there, to wit, at Turtleville aforesaid, manufacture and distil a large quantity of distilled spirits, to wit, one hundred thousand gallons of spirits, and did neglect to make true entry and report of the same, and did not then and there from day to day make true and exact entry thereof, in a book kept for that purpose, of the number of gal-
12 lons of spirits by him distilled, and also the number of gallons by him placed in warehouse, and the number of gallons by him sold and removed for consumption and sale, and the proof thereof, and the said William Hodson did not cause the same to be done.

And the said William Hodson did not conform to the provisions of said act and acts, in this, to wit, that the said William Hodson did then & there sell and remove for consumption and sale, from his distillery at Turtleville aforesaid, large quantities of spirits, then and there manufactured & distilled by him, to wit, fifty thousand gallons of spirits, and did neglect to render to the assessor or assistant assessor of the second collection district of the State of Wisconsin, at any time, a true and exact account in duplicate, taken from his books, of the number of gallons of spirits distilled by him, and also the number of gallons sold and removed for consumption and sale.

And the said William Hodson did not conform to the provisions of the laws aforesaid, in this, to wit, that the said William did then and there remove from his distillery, at Turtleville aforesaid, a large quantity, to wit, one hundred thousand gallons of spirits, then
13 & there by him manufactured, upon which duties were by law imposed, and which duties the said William Hodson neglected to pay to any person authorized by law to receive them.

And the said William did not conform to the provisions of the laws aforesaid, in this, to wit, that the said William Hodson did then & there manufacture at his said distillery a large quantity of spirits, to wit, one hundred thousand gallons of spirits, and did then and there remove the same from said distillery for consumption and sale, before the same were inspected, gauged, and proved by an inspector appointed for the performance of such duties under the provisions of the internal revenue laws of the United States, and did neglect to cause the said spirits so removed to be inspected, gauged, and proved before the same were removed as aforesaid.

All which the said plaintiffs are ready to verify. Wherefore the plaintiffs pray judgment if they ought to be barred from having and maintaining their aforesaid action against the said defendants.

THOMAS HOOD,
U. S. Att'y Dist. Wis.

Rejoinder of Wm. Hodson.

14 SEPTEMBER 2, 1868.—This day came the defendant, William Hodson, by his attorneys, and filed his rejoinder, as follows, to wit:

Circuit court of the United States for the district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, & Thomas Lynch. } Rejoinder.

And the said defendant, William Hodson, as to the said replication of the said plaintiff to the plea of the said defendant, says that the said plaintiff ought not by reason of anything by it in that replication alleged to have or maintain its aforesaid action thereof against him, the said defendant, because, he says, that after the making of said writing obligatory he did conform to all of the provisions of the said act and acts, and that he did not then & there, to wit, at Turtleville aforesaid, or at any other time or place, manufacture & distill a large quantity of distilled spirits, to wit, one hundred thousand gallons of spirits, or any other quantity of spirits, & neglect to make true entry and report of the same; that he did then & there, at all times, from day to day, make, or cause to be made, true & exact entry thereof in a book kept for that purpose, of the number of gallons of spirits by him distilled, and also the number of gallons by him placed in warehouse, and the num-
15 ber of gallons by him sold and removed for consumption and sale, and the proof thereof.

And that he, the said William Hodson, did conform to the provisions of said act & acts; & that he, the said defendant, William Hodson, did not then & there, or at any other time or place, sell and remove for consumption & sale from his distillery, at Turtleville aforesaid, large quantities of spirits, then & there manufactured and distilled by him, to wit, fifty thousand gallons of spirits, or any other quantity of spirits, then or at any other time, and neglect to render to the assessor or assistant assessor of the said second collection district of the State of Wisconsin a true & exact account, in duplicate, taken from his books, of the number of gallons of spirits distilled by him, & the number of gallons sold and removed for consumption & sale; that the said defendant, William Hodson, did then & there, & at all times, render to the assessor or assistant assessor of the aforesaid collection district a true and exact account, in duplicate, taken from his books, of the number of gallons of spirits manufactured & distilled by him, and also of the number of gallons of spirits sold & removed for consumption & sale from his distillery at Turtleville aforesaid.

And that he, the said defendant, William Hodson, did conform to the provisions of the laws aforesaid; that the said William Hodson
16 did not then & there, or at any other time, remove from his distillery, at Turtleville aforesaid, a large quantity of spirits, to wit, one hundred thousand gallons, or any other quantity of spirits, then & there by him manufactured, upon which the duties imposed by law were not paid, and that he, the said William Hodson, did not neglect to pay such duties to the person authorized by law to receive them.

And that the said defendant, William Hodson, did conform to the provisions of the law aforesaid, and that he, the said defendant, William Hodson, did not then & there, or at any other time, manufacture at his

said distillery a large quantity of spirits, to wit, one hundred thousand gallons of spirits, or any other quantity of spirits, & then & there, or at any other time, remove the same from said distillery for consumption & sale before the same were inspected, gauged, and proved by an inspector appointed for the performance of such duties under the provisions of the internal revenue laws of the United States.

And that he, the said defendant, did not neglect to cause the said spirits so removed to be inspected, gauged, & proved by such inspector before the same were removed as aforesaid.

And of this the said defendant, William Hodson, puts himself upon the country, &c.

CARPENTER & COGSWELL,
Att'ys for Def't Wm. Hodson.

Rejoinder of Hutson & Lynch.

17 And same day (September 2, 1868) came the defendants, Solomon Hutson & Thomas Lynch, by their attorney, and filed their rejoinder, as follows:

United States circuit court for the district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, & Thomas Lynch. } Rejoinder.

And the said defendants, Solomon Hutson & Thomas Lynch, as to the said replication of the said plaintiff to the plea of the said defendants, say that the said plaintiff ought not, by reason of anything by it in that replication alleged, to have or maintain its aforesaid action thereof against them, the said defendants, because they say that, after the making of said writing obligatory, the said William Hodson did conform to all of the provisions of the said act and acts, & that he, said William Hodson, did not then & there, to wit, at Turtleville aforesaid, or at any other time or place, manufacture & distill a large quantity of distilled spirits, to wit, one hundred thousand gallons of spirits, or any other quantity of spirits, and neglect to make true entry and report of the same; that he did then & there, at all times, from day to day, make, or cause to be made, true & exact entry thereof, in a book kept
18 for that purpose, of the number of gallons of spirits by him distilled, and also of the number of gallons by him placed in warehouse, & the number of gallons by him sold & removed for consumption & sale, and the proof thereof.

And that he, the said William Hodson, did conform to the provisions of said act & acts; & that he, said William Hodson, did not then & there, or at any other time or place, sell and remove for consumption & sale from his distillery, at Turtleville aforesaid, large quantities of spirits, then & there manufactured & distilled by him, to wit, fifty thousand gallons of spirits, or any other quantity of spirits, then or at any other time, and neglect to render to the assessor or assistant assessor of the said second collection district of the State of Wisconsin a true & exact account, in duplicate, taken from his books, of the number of gallons of spirits distilled by him, & the number of gallons sold & removed for consumption & sale; that the said defendant, William Hodson, did then & there, and at all times, render to the assessor or

assistant assessor of the aforesaid collection district a true & exact account, in duplicate, taken from his books, of the number of gallons of spirits manufactured & distilled by him, and also of the number of gallons of spirits sold & removed for consumption & sale from his distillery at Turtleville aforesaid.

19 And that he, said defendant, William Hodson, did conform to the provisions of the law aforesaid; that he, said William Hodson, did not then & there, or at any other time, remove from his distillery, at Turtleville aforesaid, a large quantity of spirits, to wit, one hundred thousand gallons, or any other quantity of spirits, then & there by him manufactured, upon which the duties imposed by law were not paid; & the said William Hodson did not neglect to pay such duties to the person authorized by law to receive them.

And that said defendant, William Hodson, did conform to the provisions of the laws aforesaid; and that said William Hodson did not, then & there or at any other time, manufacture at his said distillery a large quantity of spirits, to wit, one hundred thousand gallons of spirits, or any other quantity of spirits, and then & there or at any other time remove the same from said distillery for consumption & sale before the same were inspected, gauged, & proven by an inspector appointed for the performance of such duties under the provisions of the internal revenue laws of the United States; and that he did not neglect to cause the said spirits so removed to be inspected, gauged, & proved by such inspector, before the same were removed as aforesaid.

And of this the said defendants put themselves upon the country, &c.

A. HYATT SMITH,
Att'y for Def'ts. Solomon Hutson & Thomas Lynch.

Trial & verdict.

20 And now, at this same term, to wit, September term, A. D. 1868, and on the twenty-sixth day thereof, to wit, on the eighteenth day of November, A. D. 1868, the following proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, & Thomas Lynch. } At law.

This day came the district attorney, and the defendants, by their counsel, and the issue herein came on to be tried, whereupon a jury was called to try the same, who came, to wit: Isaac Selleck, Sylvanus Wade, George H. Gregory, C. C. Adsit, Gilbert C. Forsyth, Charles W. Chamberlain, Andrew Mitchell, Francis A. Lydston, George Tracy, Nathaniel S. Donaldson, George P. Sherman, and Frank H. Greenleaf; twelve free, honest, and lawful men of the district, who were severally sworn and empanneled. And the jurors of the jury aforesaid, being charged by the court on their said oaths, respectively, do say that they find the issue herein in favor of the defendants, and the said jurors of the jury do further find that the defendants do not owe and are not indebted to the United States, plaintiff, in manner and form as the said plaintiff hath herein declared against them.

21 *Judgment.*

Whereupon, it is considered and adjudged by this court now here, that the United Seates, plaintiff, take nothing by its writ.

Judgment roll signed November 18th, A. D. 1868.

EDWARD KURTZ, *Clerk.*

Judgment roll filed November 18th, A. D. 1868, at five o'clock p. m.

EDWARD KURTZ, *Clerk.*

Bill of exceptions.

NOVEMBER 19, 1868.—Bill of exceptions signed and filed as follows, to wit:

The United States of America, district of Wisconsin.

THE UNITED STATES OF AMERICA *vs.* WILLIAM HODSON, SOLOMON HUTSON, & Thomas Lynch.	In the United States circuit court.

Be it remembered, that afterwards, to wit, on the 18th day of November, A. D. 1868, before said court, the Hon. Andrew G. Miller then and there presiding, the said action and the said several issues so as aforesaid made and joined by the parties aforesaid, came on for trial; whereupon the defendants, by their counsel, claimed to have the affirmative of the said several issues, so as aforesaid joined, and then and there proceeded to introduce before the court and jury the testimony
22 of witnesses on behalf of the said defendants, pertinent to the said several issues, and to sustain the said several issues on the part of the said defendants, and then rested on the part of the said defendants.

And thereupon the said plaintiff, by their counsel, offered in evidence the writing obligatory declared on, and also the testimony of several witnesses, pertinent to the said issues, and to sustain the said issues on the part of the said plaintiff; and offered to prove the breaches as assigned in the replication aforesaid.

And thereupon the counsel for the said defendants objected to the reading of the said writing obligatory in evidence, and to the testimony and proofs so as aforesaid offered, and moved the court that the said writing obligatory, testimony, and proofs so as aforesaid offered, be excluded, rejected, and not received in evidence, on the ground that the said writing obligatory and the conditions thereof, were and are not required by and were and are not in conformity with the statutes of the United States.

And the said judge of the said court did then and there rule
23 and decide to exclude and reject the said writing obligatory, and testimony, and proofs so as aforesaid, offered by the counsel for the said plaintiffs; and did then and there grant and sustain the said motion of the said defendants, and did then and there exclude, reject, and refuse to receive the same and every part in evidence on the trial aforesaid, for the causes aforesaid; and to the said ruling and decision of the said judge of the said court, the counsel for the said plaintiffs did then and there except.

And then and there prayed that this, their bill of exceptions be signed and sealed, and the same is done this 19th day of November, A. D. 1868.

A. G. MILLER. [SEAL.]

Præcipe for writ of error.

DECEMBER 15, 1868.—This day came the district attorney and filed his præcipe for a writ of error, as follows, to wit:

The circuit court of the United States of America for the district of Wisconsin.

THE U. S. OF AMERICA
v.
WILLIAM HODSON, SOLOMON HUTSON, & THOMAS LYNCH.

Issue a writ of error in the above-entitled cause, returnable according to law.

24 Milwaukee, Dec. 15, 1868.

THOMAS HOOD,
U. S. Att'y Dist. Wis.

To EDWARD KURTZ, *Clerk, &c.*

Whereupon a writ of error and citation issued, and copy of writ of error lodged for defendants in error.

25 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Edward Kurtz, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of the United States of America against William Hodson, Solomon Hutson, and Thomas Lynch.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district of Wisconsin, this first day of March, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the said United States the ninety-third.

[SEAL] EDWARD KURTZ, *Clerk.*

26 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States of America for the district of Wisconsin, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court of the United States of America for the district of Wisconsin, before you, between the United States of America, plaintiff, and William Hodson, Solomon Hutson, and Thomas Lynch, defendants, a manifest error hath happened to the great damage of the said the United States of America, as by the complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme

Court may cause further to be done therein to correct that error, that of right and according to law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

EDWARD KURTZ, *Clerk.*

(Indorsed:) Filed December 15, 1868, in U. S. circuit court.
EDW. KURTZ, *Clerk.*

27 [SEAL.] The United States of America to William Hodson, Solomon Hutson, and Thomas Lynch, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of America for the district of Wisconsin, wherein the United States of America is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third.

A. G. MILLER,
District Judge.

28 Served on Matt. H. Carpenter, att'y, by showing him this citation, & giving to him a copy of the same personally, Jan'y 23, 1'69.

SAM'L T. HOOKER,
U. S. Marshal.

Fees: Service		$2 00
Copy		30
		2 30
A. E. Burpee fees		9 10
		$11 40

(Indorsed:) Citation.
(In pencil:) Carpenter & Cogswell, att'ys for Wm. Hodson.
A. Hyatt Smith, " " other def'ts.
Filed January 28, 1869.
(In pencil:) Served copy on Hodson, Dec. 31st, 1868. Served one copy on Smith, Jan. 2d, 1869. Travel, 73 miles.

Served on the within-named William Hodson, by delivering to him personally a copy of this citation, this 31st day of December, 1868; and served on the within-named Solomon Hutson and Thomas Lynch, by delivering personally to A. Hyatt Smith, their attorney, a copy of this citation, this second day of January, A. D. 1869.

Fees: Service, 4 00; travel, 4 50; copies, 60 $9 10.

S. T. HOOKER, *Marshal.*
By A. E. BURPEE, *Deputy.*

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE UNITED STATES
vs.
WILLIAM HODSON, SOLOMON HUTSON, and THOS. LYNCH.
No. 234.

In error to the Circuit Court of the United States for the District of Wisconsin.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE UNITED STATES
vs.
WILLIAM HODSON, SOLOMON HUTSON, and THOS. LYNCH. } No. 234.

In error to the Circuit Court of the United States for the District of Wisconsin.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This was an action of debt brought by the United States, on the 25th of February, 1868, in the circuit court of the United States for the district of Wisconsin, against the defendants in error as principal and sureties on a bond given by them under the 53d section of the internal revenue law of June 30, 1864, (13 Stat. at Large, 242,) and conditioned as follows:

"That whereas the said William Hodson has made application to the collector of internal revenue for the second collection district of the State of Wisconsin for a license as a distiller at Turtleville, situate in the town of Turtle, in the county of Rock, in the State of Wisconsin; now, therefore, if the said William Hodson

shall truly and faithfully conform to all the provisions of an act entitled 'An act to provide internal revenue to support the Government and to pay interest on the public debt and for other purposes,' approved June 30, 1864, and such other acts as are now or may hereafter be in this behalf enacted, then the above obligation to be void and of no effect, otherwise it shall abide and remain in full force and virtue." (Printed Record, pp. 4 and 5.)

The 53d section of the act of 1864, cited above, provided that an applicant for license as a distiller should, before the same is issued, give bond to the United States in such sum as should be required by the collector, with one or more sureties to be approved by the latter, conditioned—

(1.) "That in case any additional still or stills, or other implements to be used as aforesaid, shall be erected by him, his agent or superintendent, he will, before using, or causing or permitting the same to be used, report in writing to the said assessor the capacity thereof, and information from time to time of any change in the form, capacity, ownership, agency, or superintendence, which all or either of the said stills or other implements may undergo.

(2.) "That he will from day to day enter, or cause to be entered, in a book to be kept for that purpose, the number of gallons of spirits that may be distilled by said still or stills, or other implements, and also of the quantities of grain, or other vegetable productions,

or other substances, put into the mash-tub, or otherwise used by him, his agent or superintendent, for the purpose of producing spirits; and said book shall be open at all times during the day (Sundays excepted) to the inspection of the said assessor, assistant assessor, collector, deputy collector, or inspector, who may make any memorandums or transcripts therefrom.

(3.) "That he will render to the said assessor or assistant assessor, on the first, eleventh, and twenty-first days of each and every month, or within five days thereafter, during the continuance of said license, an exact account, in writing, of the number of gallons of spirits distilled, and also of the number of gallons placed in warehouse, and the number sold, or removed for consumption or sale, by him, his agent or superintendent, and the proof thereof; and also of the quantities of grain, or other vegetable productions, or other substances, put into the mash-tub, or otherwise used by him, his agent or superintendent, for the purpose of producing spirits, for the period or fractional part of a month then next preceding the date of said report, which said report shall be verified by affidavit in the manner prescribed by law.

(4.) "That he will not sell, or permit to be sold, or removed for consumption or sale, any spirits distilled by him under and by virtue of his said license, until the same shall have been inspected, gauged, and proved, and the quantity thereof duly entered upon his books as aforesaid.

(5.) "That he will, at the time of rendering said account, pay to the said collector, or his deputy, the duties which by law are imposed on the spirits so distilled."

The breaches specially assigned in the pleadings were: 1. That the said Hodson manufactured and distilled a large quantity of spirits, and neglected to make true entry and report thereof, and did not from day to day make true and exact entry, in a book kept for that purpose, of the number of gallons of spirits by him distilled, the number of gallons by him placed in warehouse, and the number of gallons by him removed for consumption and sale, and the proof thereof. 2. That he sold, and removed for consumption and sale, from his distillery, large quantities of spirits distilled and manufactured by him, and neglected to render to the assessor, at any time, a true and exact account, in duplicate, taken from his books, of the number of gallons of spirits distilled by him, and also the number of gallons sold and removed for consumption and sale. 3. That he removed from his distillery a large quantity of spirits manufactured by him, upon which duties were by law imposed, and which duties he neglected to pay to any person authorized by law to receive them. 4. That he manufactured at his distillery a large quantity of spirits, and removed the same therefrom, for consumption and sale, before the same was inspected, gauged, and proved by an inspector appointed for the purpose of such duties, under the provisions of the

internal revenue laws, and neglected to cause the said spirits to be inspected, gauged, and proved before the same were removed as aforesaid. (*Ibid.*, p. 6.)

The 57th section of the same statute enjoined certain duties upon distillers of spirituous liquors, which are prescribed in nearly the same language as that employed by the 53d section in describing the condition of the bond thereby required from an applicant for a distiller's license; and it appears that the breaches here assigned were partly framed so as to include alleged violations by the defendant, Hodson, of some of the requirements of the former, and partly to embrace alleged non-compliance by him with some of the provisions of the latter section.

Upon the trial, the plaintiff offered in evidence the bond declared on, and also evidence to prove the breaches assigned; but the counsel for defendants objected to the admission of the evidence, on the ground that the said bond and the condition thereof did not conform to the provisions of the statute. The court sustained the motion, to which ruling the plaintiff excepted, and the jury then found for the defendants. (*Ibid.*, pp. 9 and 10.) So that the only question presented by the record is the validity or invalidity of the bond itself.

ARGUMENT.

I.

It may be observed, in the outset, that it nowhere appears in the record that the bond in question was

ing the efficacy of the remainder of the condition or the validity of the bond.

II.

That part of the condition which requires the principal obligor to "truly and faithfully conform to all the provisions" of the act of 1864, *ex vi termini* includes the various duties enumerated in the section describing the bond; and the instrument, being thus in substantial though not in literal compliance with the statute, is good as a statutory bond.

In the case of statutory bonds, it has frequently been held that where there is a substantial compliance with the law, the want of a rigid conformity with the mere letter of a statute requiring a bond to be taken is not a fatal objection to the bond. Central Bank *vs.* Kendrick, Dudley, (Geo.,) 66; Gardener *vs.* Woodyear, 1 Ohio, 78; Yale *vs.* Flanders, 4 Wis., 96; Nunn *vs.* Goodlett, 5 Eng., 89. And that when the substance of a bond is prescribed by statute, if the bond be so drawn as to include all the obligations imposed by the statute, and to allow every defence given by law, it will be valid, though variant from the form prescribed.

Rhodes *vs.* Vaughn, 2 Hawks., 167.

Cobb *vs.* Commonwealth, 3 Monroe, 391.

It is true, the phraseology of the condition quoted above, viz: to "conform to all the provisions" of the act, may, in its generality, be capable of including more than the statute required to be inserted in the condi-

tion. But the bond being given with reference to the statute, must be construed by the statute, (Baker *vs.* Morrison, 4 La. An., 373; also, 9 R., 535, 16 La., 188;) so that the language of the condition, if in terms so comprehensive as to embrace more than was contemplated by the legislature, will be restrained in its operation to what may be lawfully included therein. Accordingly, no breaches are properly assignable thereunder for anything not within the requirements of the statute. Hall *vs.* Cushing, 9 Pick., 395.

The case of The State of Ohio *vs.* Findley, 10 Ohio, 51, which arose under a law of that State, passed in 1831, prescribing the duties of county treasurers, (see Swan's Rev. Stat, Derby's edition of 1854, p. 1008,) is precisely in point. The second section of the act referred to required "that each county treasurer, previous to entering on the duties of his office, shall give bond * * * * conditioned for the paying over, according to law, all moneys which shall come into his hands for State, county, township, or other purposes." Subsequent sections of the same act prescribed various other duties to be performed by the county treasurer, not enumerated above. It was held in that case that a bond given by a county treasurer under that act conditioned that he should "faithfully and impartially discharge *all* the duties of his said office agreeably to law," is a good statutory bond *for so much as is prescribed by the statute and comprehended in the condition*, even though it may be void for the residue. The court

there observed, *arguendo*, "It might be supposed that that part which is void for excess cannot be severed from that which is good, as it can where the condition is divided into distinct parts, containing an unexceptionable part in one clause, and an exceptionable part in another. But to balk or hesitate here would be to fly after the shadow, after we had got possession of the substance. That part which is legal is marked out in the statute-book itself, and is therefore as completely severable from the rest as if the two parts were separated in the condition of the bond. There can be neither mistake, confusion, or injustice in so holding. The law is not so absolutely a cabalistical science as to refuse to listen to the interpretations of good sense."

III.

It follows from the foregoing that, viewing the instrument declared on simply in the light of a statutory bond, it is valid, and that the defendants in error would be clearly liable thereon in respect of those breaches assigned in the pleadings against which the statute required the bond to be conditioned, though not in respect of those which do not fall within such requirement. The principal considerations that support this conclusion are, that as the bond was voluntarily given, and contains no element of illegality, and was manifestly taken in good faith for the single purpose of securing those things which it was intended such bond

should secure, if the language of the condition is so general as to embrace any duty which, if separately specified, would have been rejected as an excess or surplusage, it is more in accordance with good sense, and with the maxim *ut res magis valeat quam pereat*, and moreover with what is just to both parties, to regard the condition as not in point of law including that duty, but nevertheless as good and effectual for those duties which are required by the statute to be included therein.

IV.

Finally, if the bond is not good as a statutory bond, yet having been voluntarily given, and being neither prohibited by the statute nor against the policy of the law, it is valid as a common law obligation:

United States *vs.* Tingey, 5 Pet., 115.

United States *vs.* Linn, 15 Pet., 290.

Greathouse *vs.* Dunlap, 3 McLean, 303.

In Bank of Brighton *vs.* Smith, 5 Allen, 415, it is said by Bigelow, C. J.: "The rule of law is well settled, that a bond given for the faithful performance of official duties, or in pursuance of some requirement of law, may be valid and binding on the parties, although not made with the formalities or executed in the mode provided by the statute under which it purports to have been given. This rule rests on the principle that, although the instrument may not conform to the special provisions of a statute or regulation in compliance with which the parties executed it, nevertheless, it is a con-

tract voluntarily entered into upon a sufficient consideration, for a purpose not contrary to law, and therefore it is obligatory on the parties to it in like manner as any other contract or agreement is held valid at common law"—citing Morse *vs.* Hodsdon, 5 Mass., 314; Burroughs *vs.* Lowder, 8 Mass., 373; Sweetser *vs.* Hay, 2 Gray, 49.

In support of this doctrine the following additional authorities may be cited: Dunbar *vs.* Dunn, 10 Price, 54; Justices *vs.* Smith, 2 J. J. Marsh., 473; Hoy *vs.* Rogers, 4 Monroe, 225; Lane *vs.* Kasey, 1 Metcalfe, (Ky.,) 410; Gathwright *vs.* Calloway County, 10 Mo., 663; Horn *vs.* Whittier, 6 N. H., 88.

A. T. AKERMAN,
Attorney General.

1 Brock 177 —
15 Pet —
3 McLane
5 Wall
5 Allen McBryde
7 Wall — 573

Supreme Court of the United States.

DECEMBER TERM, 1869.

THE UNITED STATES
vs.
WILLIAM HOBSON, *et al.*, } No. 234.

DECEMBER TERM, 1869.

SAME
vs.
SAME. } No. 236.

These two cases depend upon the same and a single question: *Was the bond sued on valid?*

Under the act of June 30, 1864, (13 Stat. at Large, 242,) no person could carry on the business of a distiller without giving a certain bond, the condition of which is with great particularity provided for by the 53d section. The bond sued on was exacted by the Government, as a condition precedent to the prosecution of the defendant's business. It is, therefore, not true that the bond was given voluntarily. It was required to be given, and was given only because it was required.

This act imposes various duties upon the distiller, the performance of which is enforced by penal sanctions, but for the performance of which the distiller is not required to enter into bonds.

One thing required by the act is, that the distiller shall from day to day "enter in a book to be kept for that purpose * * the number of gallons placed in warehouse, and also the number sold or removed for consumption and sale, and the proof thereof." (§ 57, 13 Stats. at Large, 243.)

One of the breaches of this bond is alleged to be, that the defendant did not, from day to day, "make true and exact entry thereof, *in a book kept for that purpose*, of the number of gallons by him *placed in warehouse, and the number of gallons by him sold and removed for consumption and sale, and the proof thereof.*" (Record, 234, p. 6.)

This, by the act, he was required to do, but the act did not require him to give a bond that he would do so.

In United States *vs.* Tingey (5 Pet., 115) this court held, that where a bond, not required by law, was exacted by an officer of the Government of his subordinate, as a condition of his holding his office, the bond was void.

The principle of that decision ought to control this case. Here the act required a certain bond to be given, as a condition precedent to the right to carry on this business. The officers of the Government produced blank bonds and required them to be executed. The defendant was informed by the law that he must give a bond, or forfeit his property; the officer to whom the bond is required to be given presents the blank to be executed under the law. The defendant acts at his peril. If he misjudges as to the right of the Government to have this precise form of bond, his property is forfeited, and he is to be punished criminally. Therefore he gives the bond, which no law required; a bond which completely superseded the provisions of the act, and adopted a totally new system. The bond is therefore void.

MATT. H. CARPENTER,
Of Counsel for Defendant.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

CHARLES SUTSON,

DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~471~~

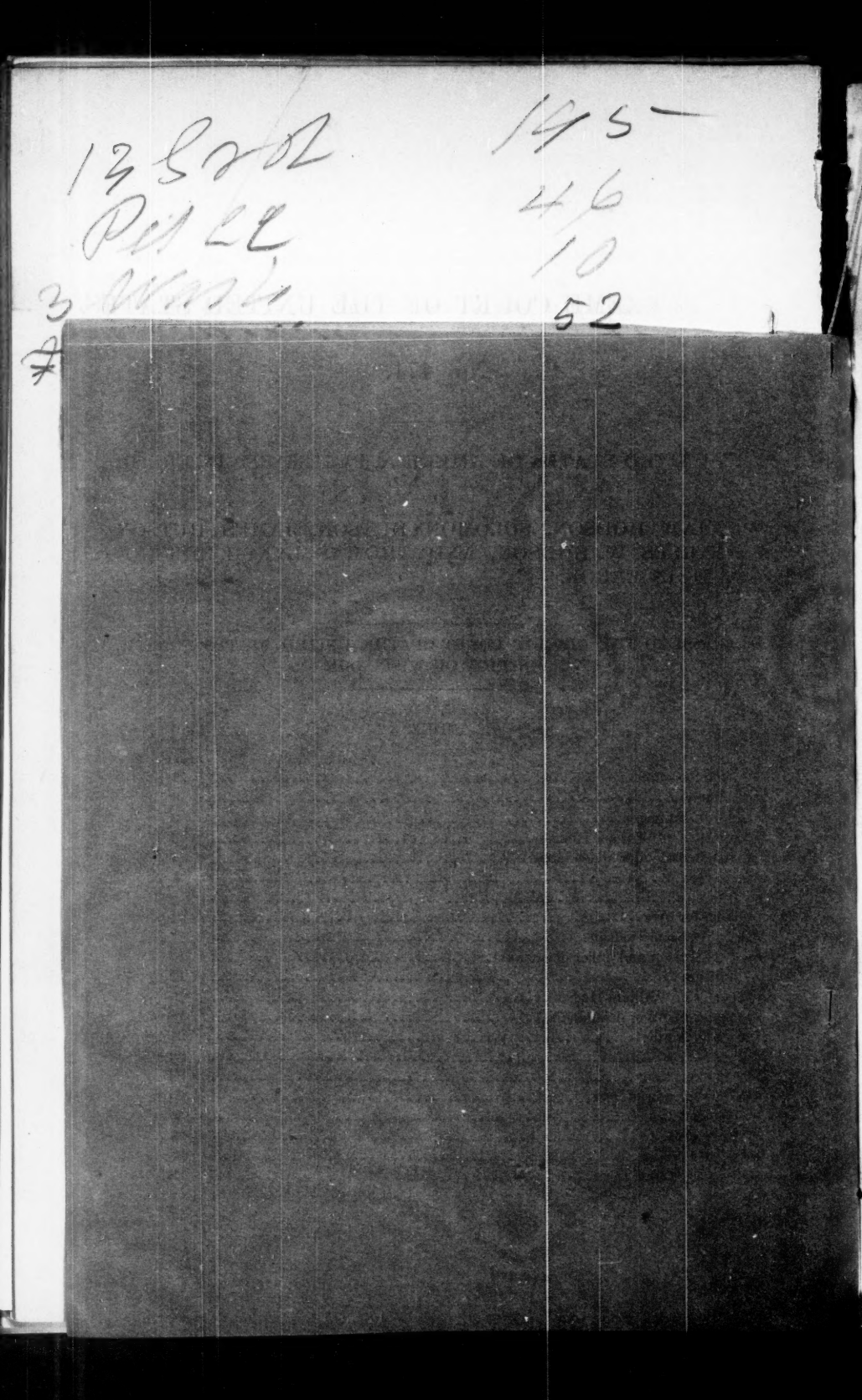
THE UNITED STATES OF AMERICA, PLAINTIFFS IN ERROR,

vs.

WILLIAM HODSON, SOLOMON HUTSON, JAMES HUTSON, CHARLES W. HODSON, AND THOMAS LYNCH, DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

FILED MAY 26, 1869.



4.

SUPREME COURT OF THE UNITED STATES.

No. 471.

THE UNITED STATES OF AMERICA, PLAINTIFFS IN ERROR,

vs.

WILLIAM HODSON, SOLOMON HUTSON, JAMES HUTSON, CHARLES W. HODSON, AND THOMAS LYNCH, DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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1 Circuit court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the fourteenth day) of September, A. D. 1868—present, the Honorable Andrew G. Miller, district judge, presiding; Cassius Fairchild, marshal; Edward Kurtz, clerk—among other the following proceedings were had, to wit:

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, James Hutson, Charles W. Hodson, & Thomas Lynch. } At law.

Præcipe for summons.

Be it remembered that heretofore, to wit, on the 25th day of February, A. D. 1868, came the U. S. district attorney, Mr. Cogswell, and filed his præcipe for a summons against the above-named defendants, as follows, to wit:

Circuit court of the United States of America, district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, James Hutson, Charles W. Hodson, & Thomas Lynch.

Issue a summons in the above-entitled cause of a plea of debt, to the plaintiffs' damage six thousand ($6,000) dollars, returnable on the first Monday of March next ensuing.

Milwaukee, Feb. 25th, 1868.

JNO. B. D. COGSWELL,
U. S. Att'y Wis.

To EDW. KURTZ, *Clerk, &c.*

Whereupon a summons issued as follows:

2 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the marshal of the district of Wisconsin, greeting:

You are hereby commanded to summon William Hodson, Solomon Hutson, James Hutson, Charles W. Hodson, and Thomas Lynch to appear before the circuit court of the United States of America for the district of Wisconsin, in the seventh circuit, at the United States court-room in the city of Milwaukee, on the first Monday of March ensuing, then and there to answer unto the United States of America in a plea of debt, to their damage six thousand dollars, which shall then and there be made to appear. And of this writ make due return.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district,

this twenty-fifth day of February, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

EDWARD KURTZ, *Clerk.*

JNO. B. D. COGSWELL,
U. S. Dist. Attorney.

(Indorsed:) Law docket. vs. Summons.
Damages, $. Filed 186 .

3 *Return to summons.*

Summons returned: "Served on the within-named William Hodson, Solomon Hutson, James Hutson, Charles W. Hodson, and Thomas Lynch, by showing them this summons and delivering to each of them a copy thereof, this 26th day of February, 1868.

"CASSIUS FAIRCHILD, *Marshal.*
"By A. E. BURPEE, *Deputy.*"

Fees $15 38.

Appearance of Wm. Hodson.

MARCH 5, 1868.—This day came the defendant, William Hodson, by his attorneys, Messrs. Carpenter & Cogswell, and filed his appearance, as follows:

Circuit court of the United States for the district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, James Hutson, Charles W. Hodson, & Thomas Lynch.

Please take notice that we have been retained for the defendant William Hodson, in the above-entitled cause, and appear for him therein.

CARPENTER & COGSWELL,
Att'ys for Def't William Hodson.

To JNO. B. D. COGSWELL,
U. S. Dist. Att'y.

Endorsed as follows: Service of within admitted March 2d, 1868.
JNO. B. D. COGSWELL,
U. S. Att'y Dist. Wis.

And same day, (March 5, 1868,) came the defendants Solomon Hutson, James Hutson, Charles W. Hodson, and Thomas Lynch, by their attorney, Mr. A. Hyatt Smith, and filed their appearance, as follows:

4 *Appearance of Solomon Hutson et al.*

Circuit court of the United States for the district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, James Hutson, Charles W. Hodson, & Thomas Lynch.

Please take notice that I have been retained for the defendants

Solomon Hutson, James Hutson, Charles W. Hodson, & Thomas Lynch, in the above-entitled action, & appear for them therein.

A. HYATT SMITH, *Janesville, Wis.*,
Att'y for Def'ts as aforesaid.

To JNO. B. D. COGSWELL,
U. S. Dist. Att'y.

Endorsed as follows: Service of within admitted March 2d, 1868.
JNO. B. D. COGSWELL,
Att'y U. S. Dist. Wis.

Declaration.

JUNE 12, 1868.—This day came the district attorney and filed his declaration, as follows:

The United States circuit court, district of Wisconsin.—Of the first Monday of March, 1868.

The United States of America, the plaintiffs in this suit, by Thomas Hood, their attorney, come and complain of William Hodson, Solomon Hutson, James Hutson, Charles W. Hodson, and Thomas Lynch, the defendants in this suit, of a plea that they render to the said
5 plaintiffs the sum of five thousand dollars which they owe to and unjustly detain from the said plaintiffs.

For that whereas the said defendants, heretofore, to wit, on the 20th day of September, A. D. 1865, at Turtleville, to wit, at the district of Wisconsin aforesaid, made their joint and several writing obligatory, sealed with their seals, and now shown to the court, the date whereof is a certain day and year therein mentioned, to wit, the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said plaintiffs in the sum of five thousand dollars, above demanded to be paid to the said plaintiffs.

Yet the said defendants, although often requested, have not paid the said sum of five thousand dollars above demanded, or any part thereof, to the said plaintiffs, but have hitherto wholly neglected and refused, and still neglect and refuse so to do.

To the damage of the plaintiffs of six thousand dollars, and therefore they bring suit by

THOMAS HOOD,
U. S. Att'y Dist. Wis.

Rule to plead.

JULY 6, 1868.—This day came the district attorney, and, on his motion, it is ordered by the court that the defendants plead to the plaintiffs' declaration on file by the first Monday of August next, or their default will be entered.

(There is no page 6. E. K., *Clerk.*)

7 *Demand for oyer.*

JULY 18, 1868.—Demand for oyer filed, to wit:

Circuit court of the United States for the district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, JAMES Hutson, Charles W. Hodson, & Thomas Lynch.

The defendants demand oyer, & copy of the writing obligatory mentioned in the declaration in this cause, and the condition thereof.
Dated July , 1868.

Yours, &c.,
CARPENTER & COGSWELL,
Att'ys for Def't Wm. Hodson.
A. HYATT SMITH,
Att'y for other Def'ts.

To THOMAS HOOD, Esq.,
U. S. Dist. Att'y.

Oyer given by copy of bond—received July 18, 1868.
CARPENTER & COGSWELL,
Att'y for Wm. Hodson.
A. HYATT SMITH,
For other Def'ts.

Plea of William Hodson.

JULY 31, 1868.—This day came the defendant William Hodson, by his attorneys, and filed his plea, as follows:

Circuit court of the United States for the district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, JAMES Hutson, Charles W. Hodson & Thomas Lynch.

8 And the said defendant William Hodson, by Carpenter & Cogswell, his attorneys, comes and defends the wrong & injury, when, &c., and craves oyer of said supposed writing obligatory in the said declaration mentioned, & it is read to him, &c.; and he also craves oyer of the condition of the said supposed writing obligatory, and it is read to him in these words:

"The condition of the foregoing obligation is such, that whereas the said William has made application to the collector of internal revenue for the second collection district of the State of Wisconsin for a license as a distiller at Shopier, situate in the town of Turtle, in the county of Rock, in the State of Wisconsin: Now, therefore, if the said William Hodson shall truly and faithfully conform to all the provisions of an 'Act to provide internal revenue to support the government and to pay interest on the public debt and for other purposes,' approved June 30th, 1864, and such other acts as are now or may hereafter be in this behalf enacted, then the above obligation to be void & of no effect; otherwise it shall abide & remain in full force and virtue."

Which being read & heard, the said defendant says that the said plaintiff ought not to have or maintain its said action thereof against him; because, he says, that he, the said defendant did, from time to time, & at all times after the making of the said writing
9 obligatory, & the condition thereof, well & truly and faithfully conform to all & singular the provisions of the said act to provide internal revenue to support the government and to pay interest on the public debt, and for other purposes, approved June 30th, 1864, and of such other act or acts as were then or were thereafter in that behalf enacted, in the said condition of the said writing obligatory specified, comprised, and mentioned in all things therein contained on his part & behalf to be observed, performed, fulfilled, & kept, according to the tenor & effect, true intent & meaning, of the said writing obligatory.

And this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain its aforesaid action against him, &c.

CARPENTER & COGSWELL,
Attorneys for Defendant Wm. Hodson.

I certify that, in my opinion, the foregoing plea is well founded.
GEO. COGSWELL,
Of Counsel.

And same day (July 31, 1868) came the defendants Solomon Hutson, James Hutson, Charles W. Hodson, and Thomas Lynch, by their attorney, and filed their plea as follows, to wit:

Circuit court of the United States for the district of Wisconsin.

10 *Plea of Solomon Hutson et al.*

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, James Hutson, Charles W. Hodson, & Thomas Lynch.

And the said defendants Solomon Hutson, James Hutson, Charles W. Hodson, & Thomas Lynch, by A. Hyatt Smith, their attorney, come and defend the wrong & injury when, &c., and crave oyer of said supposed writing obligatory in the said declaration mentioned; and it is read to them, &c.; and they also crave oyer of the condition of the said supposed writing obligatory, and it is read to them in these words: "The condition of the foregoing obligation is such, that whereas the said William Hodson has made application to the collector of internal revenue for the second collection district of the State of Wisconsin, for a license as a distiller at Shopier, situate in the town of Turtle, in the county of Rock, and State of Wisconsin aforesaid: Now, therefore, if the said William Hodson shall truly and faithfully conform to all the provisions of 'An act to provide internal revenue to support the government and to pay interest on the public debt' and for other purposes, approved June 30th, 1864, and of such other act or acts as are now or may hereafter be
11 in this behalf enacted, then the above obligation to be void and of no effect; otherwise it shall abide and remain in full force & virtue."

Which being read & heard, the said defendants say that the said plaintiff ought not to have or maintain its said action thereof against

them, because they say that the said William Hodson did, from time to time, & at all times after the making of said writing obligatory & the condition thereof, well, truly, & faithfully conform to all & singular the provisions of "An act to provide internal revenue to support the government & to pay interest on the public debt, and for other purposes," approved June 30th, 1864, and of such other act or acts as were then or were thereafter in that behalf enacted, in the said condition of the said writing obligatory specified, comprised, and mentioned in all things therein contained on his part and behalf to be observed, performed, fulfilled, & kept, according to the tenor & effect, true intent & meaning, of the said condition of the said writing obligatory.

And this the said defendants are ready to verify; wherefore they pray judgment if the said plaintiff ought to have or maintain its aforesaid action against them.

A. HYATT SMITH,
Attorney for Defendants Solomon Hutson, James
12 *Hutson, Charles W. Hodson, & Thomas Lynch.*

I certify that, in my opinion, the foregoing plea is well founded.
GEO. COGSWELL,
Of Counsel.

Replication.

AUGUST 19, 1868.—This day came the district attorney and filed his replication, as follows:

United States circuit court, district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, James Hutson, Charles W. Hodson, & Thomas Lynch. } Replication.

And the said plaintiffs, as to the pleas of the said defendants by them above pleaded, say that they ought not to be barred from having and maintaining their aforesaid action against the said defendants, because they say that after the making of the said writing obligatory and before the commencement of this suit, the said William Hodson did not conform to all the provisions of the said act and acts; that is to say, the said William Hodson did then and there, to wit, at Shopiere & Turtleville aforesaid, manufacture and distill a large quantity of distilled spirits, to wit,
13 one hundred thousand gallons of spirits, and did neglect to make true entry and report of the same, and did not then and there, from day to day, make true and exact entry thereof, in a book kept for that purpose, of the number of gallons of spirits by him distilled, and also the number of gallons by him placed in warehouse, and the number of gallons by him sold and removed for consumption and sale and the proof thereof, and the said William Hodson did not cause the same to be done.

And the said William Hodson did not conform to the provisions of said act and acts in this, to wit, that the said William Hodson did then and there sell and remove for consumption and sale from his distillery at Shopiere & Turtle aforesaid, large quantities of spirits then and there manufactured and distilled by him, to wit, fifty thousand gallons of spirits,

and did neglect to render to the assessor or assistant assessor of the second collection district of the State of Wisconsin, at any time a true and exact account, in duplicate, taken from his books, of the number of gallons of spirits distilled by him, and also the number of gallons sold and removed for consumption and sale.

And the said William Hodson did not conform to the provisions
14 of the laws aforesaid in this, to wit, that the said William Hodson did then and there remove from his distillery at Shopiere, in Turtle aforesaid, a large quantity, to wit, one hundred thousand gallons of spirits, then and there by him manufactured, upon which duties were by law imposed, and which duties the said William Hodson neglected to pay to any person authorized by law to receive them.

And the said William did not conform to the provision of the law aforesaid in this, to wit, that the said William Hodson did then & there manufacture at his said distillery a large quantity of spirits, to wit, one hundred thousand gallons of spirits, and did then and there remove the same from said distillery for consumption and sale, before the same were inspected, gauged, and branded by an inspector appointed for the performance of such duties under the provisions of the internal revenue laws of the United States, and did neglect to cause the said spirits, so removed, to be inspected, gauged, and branded before the same were removed as aforesaid.

All which the said plaintiffs are ready to verify; wherefore the plaintiffs pray judgment if they ought to be barred from having and maintaining their aforesaid action against the said defendants.

THOMAS HOOD,
U. S. Att'y Dist. Wis.

15 *Rejoinder of Wm. Hodson.*

SEPTEMBER 2, 1868.—This day came the defendant William Hodson, by his attorneys, and filed his rejoinder, as follows, to wit:

United States circuit court for the district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, James Hutson, Charles W. Hodson, & Thomas Lynch. } Rejoinder.

And the said defendant, William Hodson, as to the said replication of the said plaintiff to the plea of the said defendant says, that the said plaintiff ought not, by reason of anything by it in that replication alleged, to have or maintain its aforesaid action thereof against him, the said defendant, because he says that, after the making of said writing obligatory, he did conform to all of the provisions of the said act and acts, & that he did not then & there, to wit, at Turtleville aforesaid, or at any other time or place, manufacture & distil a large quantity of distilled spirits, to wit, one hundred thousand gallons of spirits, or any other quantity of spirits, & neglect to make true entry & report of the same; that he did, then & there, at all times, from day to day, make or cause to be made, true & exact entry thereof in a book kept
16 for that purpose, of the number of gallons of spirits by him distilled, and also the number of gallons by him placed in warehouse, & the number of gallons by him sold & removed for consumption & sale, and the proof thereof.

And that he, the said William Hodson, did conform to the provisions

of said act & acts, & that he, the said defendant William Hodson, did not then & there, or at any other time or place, sell & remove for consumption & sale from his distillery at Turtleville aforesaid, large quantities of spirits, then & there manufactured & distilled by him, to wit, fifty thousand gallons of spirits, or any other quantity of spirits, then or at any other time, and neglect to render to the assessor or assistant assessor of the said second collection district of the State of Wisconsin, a true & exact account, in duplicate, taken from his books, of the number of gallons of spirits distilled by him & the number of gallons sold and removed for consumption & sale; that he, said defendant, William Hodson, did then & there & at all times render to the assessor or assistant assessor of the aforesaid collection district, a true & exact account, in duplicate, taken from his books, of the number of gallons of spirits manufactured & distilled by him, and also of the number of gallons of spirits sold & removed for consumption & sale from his distillery at Turtleville aforesaid.

17 And that he, the said defendant, William Hodson, did conform to the provisions of the laws aforesaid; that he, said William Hodson, did not then & there, or at any other time, remove from his distillery at Turtleville aforesaid, a large quantity of spirits, to wit, one hundred thousand gallons, or any other quantity of spirits then & there by him manufactured, upon which the duties imposed by law were not paid, and that he, the said William Hodson, did not neglect to pay such duties to the person authorized by law to receive them.

And that said defendant, William Hodson, did conform to the provisions of the law aforesaid; and that he, the said defendant, William Hodson, did not then and there, or at any other time, manufacture at his said distillery a large quantity of spirits, to wit, one hundred thousand gallons of spirits, or any other quantity of spirits, & then & there, or at any other time, remove the same from said distillery for consumption & sale before the same were inspected, gauged, & proved by an inspector appointed for the performance of such duties, under the provisions of the internal revenue laws of the United States; and that he,

18 the said defendant, did not neglect to cause the said spirits so removed to be inspected, gauged, & proved by such inspector before the same were removed as aforesaid.

And of this the said defendant, William Hodson, puts himself upon the country, &c.

CARPENTER & COGSWELL,
Att'ys for Wm. Hodson Def't.

Rejoinder of Solomon Hutson et al.

And same day, (September 2, 1868,) came the defendants Solomon Hutson, James Hutson, Charles W. Hodson, & Thomas Lynch, by their attorney, and filed their rejoinder, as follows, to wit:

United States circuit court for the district of Wisconsin.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, James Hutson, Charles W. Hodson, & Thomas Lynch.

And the said defendants Solomon Hutson, James Hutson, Charles W. Hodson, & Thomas Lynch, as to the replication of the said plaintiff to the plea of the said defendants, say that said plaintiff ought not, by reason of anything by it in that replication alleged, to have or maintain its aforesaid action thereof against them, the said defendants, because,

they say that, after the making of said writing obligatory, the said William Hodson did conform to all of the provisions of the said act
19 and acts, & that he, said William Hodson, did not then & there, to wit, at Turtleville aforesaid, or at any other time or place, manufacture & distill a large quantity of distilled spirits, to wit, one hundred thousand gallons of spirits, or any other quantity of spirits, and neglect to make true entry and report of the same; that he did then and there, at all times, from day to day, make or cause to be made, true & exact entry thereof, in a book kept for that purpose, oft he number of gallons of spirits by him distilled, and also of the number of gallons by him placed in warehouse, & the number of gallons by him sold & removed for consumption & sale, and the proof thereof.

And that he, said William Hodson, did conform to the provisions of said act & acts, & that he, said William Hodson, did not then & there, or at any other time or place, sell and remove for consumption & sale, from his distillery at Turtleville aforesaid, large quantities of spirits, then & there manufactured & distilled by him, to wit, fifty thousand gallons of spirits, or any other quantity of spirits, then or at any other time, and neglect to render to the assessor or assistant assessor of the said second collection district of the State of Wisconsin, a true & exact account, in duplicate, taken from his books, of the number of gal-
20 lons of spirits distilled by him, & the number of gallons sold and removed for consumption & sale; that the said d'f't William Hodson, did then & there, and at all times, render to the assessor or assistant assessor of the aforesaid collection district, a true & exact account, in duplicate, taken from his books, of the number of gallons of spirits manufactured & distilled by him, and also of the number of gallons of spirits sold & removed for consumption & sale from his distilery at Turtleville aforesaid.

And that the said defendant, William Hodson, did conform to the provisions of the laws aforesaid; that the said William Hodson did not then & there, or at any other time, remove from his distillery at Turtleville aforesaid, a large quantity of spirits, to wit, one hundred thousand gallons, or any other quantity of spirits then and there by him manufactured, upon which the duties imposed by law were not paid; & the said William Hodson did not neglect to pay such duties to the person authorized by law to receive them.

And that said defendant, William Hodson, did conform to the provisions of the law aforesaid, and that said William Hodson did not then & there, or at any other time, manufacture at his said distillery, a large quantity of spirits, to wit, one hundred thousand gallons of
21 spirits, or any other quantity of spirits, and then & there, or at any other time, remove the same from said distillery for consumption & sale before the same were inspected, gauged, & proved by an inspector appointed for the performance of such duties, under the provisions of the internal revenue laws of the United States; and that he did not neglect to cause the said spirits so removed to be inspected, gauged, & proven by such inspector, before the same were removed as aforesaid.

And of this the said defendants put themselves upon the country, &c.

A. HYATT SMITH,
Att'y for Deft's Solomon Hutson, James Hutson, Charles W. Hodson, & Thomas Lynch.

And now at this same term, to wit, September term, A. D. 1868, and on the twenty-sixth day of said term, to wit, on the eighteenth day of November A. D. 1868, the following proceedings were had, to wit:

Trial & verdict.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, James Hutson, Charles W. Hodson, & Thomas Lynch. } At law.

This day came the district attorney and the defendants, by their counsel, and the issue herein came on to be tried; whereupon a jury
22 was called to try the same, who came, to wit, Isaac Selleck, Sylvanus Wade, George K. Gregory, C. D. Adsit, Gilbert C. Forsyth, Charles W. Chamberlain, Andrew Mitchell, Francis A. Lydston, George Tracy, Nathaniel S. Donaldson, George P. Sherman, and Frank H. Greenleaf; twelve free, honest, and lawful men of the district, who were severally sworn and empanneled; and the jurors of the jury aforesaid, being charged by the court, on their said oaths respectively, do say that they find the issue herein in favor of the defendants; and the said jurors of the jury do further find that the defendants do not owe and are not indebted to the United States, plaintiffs, in manner and form as the said plaintiffs have herein declared against them.

Judgment.

Whereupon it is considered and adjudged by this court now here, that the United States, plaintiff, take nothing by its writ.

Judgment roll signed November 18th, A. D. 1868.
EDWARD KURTZ, *Clerk.*

Judgemnt roll filed November 18th, A. D. 1868, at five o'clock p. m.
EDWARD KURTZ, *Clerk.*

NOVEMBER, 19, 1868.—Bill of exceptions signed and filed, as follows, to wit:

23 *Bill of Exceptions.*

THE UNITED STATES OF AMERICA, *District of Wisconsin:*

In the United States circuit court.

THE UNITED STATES OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, James Hutson, Charles W. Hodson, & Thomas Lynch.

Be it remembered, that afterwards, to wit, on the 18th day of November, A. D. 1868, before said court, the Hon. Andrew G. Miller then and there presiding, the said action, and the said several issues, so as aforesaid made and joined by the parties aforesaid, came on for trial; whereupon the defendants, by their counsel, claimed to have the affirmative of the said several issues, so as aforesaid joined, and then and there proceeded to introduce before the court and jury the testimony of witnesses on behalf of the said defendants, pertinent to the said several issues, and to sustain the said issues on the part of the said defendants, and rested on the part of the said defendants.

And thereupon the said plaintiffs, by their counsel, offered in evidence the writing obligatory declared on, and also the testimony of several witnesses, pertinent to the said issues, and to sustain the said issues on the part of the said plaintiffs, and offered to prove the breaches
24 as assigned in the replication aforesaid.

And thereupon the counsel for the said defendants objected to the reading of said writing obligatory in evidence, and to the testimony and proofs so as aforesaid offered, and moved the court that the said writing obligatory, testimony, and proofs, so as aforesaid offered be excluded, and not received in evidence, on the ground that said writing obligatory and the conditions thereof were and are not required by, and were and are not in conformity with, the statutes of the United States.

And the said judge of said court did then and there rule and decide to exclude and reject the said writing obligatory and testimony and proofs so as aforesaid offered by the counsel for the said plaintiffs; and did then and there exclude, reject, and refuse to receive the same and every part thereof in evidence on the trial aforesaid, for the causes aforesaid.

And to the said ruling and decision, the counsel for the said plaintiffs did then and there except, and then and there prayed that this their bill of exceptions be signed and sealed, and the same is done this 19th day of November, 1868.

[SEAL.] A. G. MILLER.

25 *Præcipe for writ of error.*

DECEMBER 15, 1868.—This day came the district attorney, and filed his præcipe for a writ of error, as follows, to wit:

Circuit court of the United States of America for the district of Wisconsin.

THE U. S. OF AMERICA
vs.
WILLIAM HODSON, SOLOMON HUTSON, James Hutson, Charles W. Hodson, & Thomas Lynch.

Issue a writ of error in the above-entitled cause, returnable according to law.

Milwaukee, Dec. 15, 1868.

THOMAS HOOD,
U. S. Att'y Dist. Wis.

To EDWARD KURTZ, *Clerk, &c.*

Whereupon a writ of error and citation issued, and copy of writ of error lodged for defendants in error.

26 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Edward Kurtz, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file, and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of the United States of America against William Hodson, Solomon Hutson, James Hutson, Charles W. Hodson, & Thomas Lynch.

In testimony whereof, I have hereunto set my hand, and duly affixed the seal of the said court at the city of Milwaukee, in said district of Wisconsin, this first day of March, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the said United States the ninety-third.

[SEAL.] EDWARD KURTZ, *Clerk.*

27 UNITED STATES OF AMERICA, *ss*:

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States of America for the district of Wisconsin, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court of the United States of America for the district of Wisconsin, before you, between the United States of America, plaintiff, and William Hodson, Solomon Hutson, James Hutson, Charles W. Hodson, and Thomas Lynch, defendants, a manifest error hath happened to the great damage of the said the United States of America as by the complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, that of right and according to law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States the ninety-third.

EDWARD KURTZ, *Clerk.*

(Indorsed:) Filed December 15, 1868, in U. S. circuit court.

EDW. KURTZ, *Clerk.*

28 [SEAL.] The United States of America to William Hodson, Solomon Hutson, James Hutson, Charles W. Hodson, & Thomas Lynch, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of America for the district of Wisconsin, wherein the United States of America is plantiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fifteenth day of December in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third.

A. G. MILLER,
District Judge.

29 Served on Matt. H. Carpenter, att'y, by showing him this citation and giving to him a copy of the same.
January 23d, 1869.

SAM'L T. HOOKER,
U. S. Marshal.

Fees:

Service	2 00
Copy	30
	$2 30
Brupey fees	9 10
	$11 40

(Indorsed:) Citation.
Filed January 28, 1869.

(In pencil:) Served copy on Hodson, Dec. 31st, 1868. Served copy on Smith, Jan. 2d, 1869. Travel, 73 miles.

Served on the within named Solomon Hutson, James Hutson, Charles W. Hodson, and Thomas Lynch, by delivering a copy of this citation to A. Hyatt Smith, their attorney, personally this 2d day of January, A. D. 1869, and served on the within-named William Hodson by delivering to him personally a copy of this citation this 31st day of December, 1868.

S. T. HOOKER, *Marshal,*
By A. E. BURPEE, *Deputy.*

Fees:

Service	4 00
Travel	4 50
Copy	60
	9 10

In testimony whereof, I have hereunto set my hand, and duly affixed the seal of the said court at the city of Milwaukee, in said district of Wisconsin, this first day of March, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the said United States the ninety-third.

[SEAL.] EDWARD KURTZ, *Clerk.*

27 UNITED STATES OF AMERICA, *ss*:

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States of America for the district of Wisconsin, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court of the United States of America for the district of Wisconsin, before you, between the United States of America, plaintiff, and William Hodson, Solomon Hutson, James Hutson, Charles W. Hodson, and Thomas Lynch, defendants, a manifest error hath happened to the great damage of the said the United States of America as by the complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, that of right and according to law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States the ninety-third.

EDWARD KURTZ, *Clerk.*

(Indorsed:) Filed December 15, 1868, in U. S. circuit court.

EDW. KURTZ, *Clerk.*

28 [SEAL.] The United States of America to William Hodson, Solomon Hutson, James Hutson, Charles W. Hodson, & Thomas Lynch, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of America for the district of Wisconsin, wherein the United States of America is plantiff in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fifteenth day of December in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third.

A. G. MILLER,
District Judge.

29 Served on Matt. H. Carpenter, att'y, by showing him this citation and giving to him a copy of the same.
January 23d, 1869.

SAM'L T. HOOKER,
U. S. Marshal.

Fees:

Service	2 00
Copy	30
	$2 30
Brupey fees	9 10
	$11 40

(Indorsed:) Citation.
Filed January 28, 1869.

(In pencil:) Served copy on Hodson, Dec. 31st, 1868. Served copy on Smith, Jan. 2d, 1869. Travel, 73 miles.

Served on the within named Solomon Hutson, James Hutson, Charles W. Hodson, and Thomas Lynch, by delivering a copy of this citation to A. Hyatt Smith, their attorney, personally this 2d day of January, A. D. 1869, and served on the within-named William Hodson by delivering to him personally a copy of this citation this 31st day of December, 1868.

S. T. HOOKER, *Marshal,*
By A. E. BURPEE, *Deputy.*

Fees:

Service	4 00
Travel	4 50
Copy	60
	9 10

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE UNITED STATES,
vs.
WILLIAM HODSON, SOLOMON HUTSON, JAMES HUTSON, CHARLES W. HODSON, and THOMAS LYNCH. } No. 236.

In error to the Circuit Court of the United States for the District of Wisconsin.

This is precisely similar to case No. 234 on the docket. It was an action of debt brought by the United States, at the same time and in the same court, against the defendants in error, three of whom were parties in the suit just referred to, as principal and sureties on a bond given under the same section of the internal revenue law of June 30, 1864, as the bond in that case was given; and, inasmuch as the question arising upon the record is in all respects the same, the brief filed in behalf of the United States in that case is respectfully submitted to the court as applicable to this.

A. T. AKERMAN,
Attorney General.